

Appendix B Agency Coordination and Permits

MDAH Coordination



PO Box 571, Jackson, MS 39205-0571
601-576-6850 • Fax 601-576-6975
mdah.state.ms.us
H. T. Holmes, Director

May 27, 2011

Mr. Michael Grisham
Environmental Liaison Officer
FEMA-DR-1604-MS
220 Popps Ferry Road, Bldg. A South
Biloxi, Mississippi 39531

RE: Phase I Marine Archaeological Remote Sensing Survey for the Bay St.
Louis Municipal Pier and Harbor Project, FEMA-1604-DR-MS,
MDAH Project Log #05-016-11, Hancock County

Dear Michael:

We have reviewed the April 20, 2011 remote sensing cultural resources survey report by J. B. Pelletier, MA, principal investigator, received on May 4, 2011, for the above referenced undertaking, pursuant to our responsibilities under Section 106 of the National Historic Preservation Act and 36 CFR Part 800. After review, we concur that no known submerged cultural resources listed in or eligible for listing in the National Register of Historic Places are likely to be affected. As such, we have no objections with the proposed undertaking.

There remains the possibility that unrecorded cultural resources may be encountered during the project. Should this occur, we would appreciate your contacting this office immediately in order that we may offer appropriate comments under 36 CFR 800.13.

Please provide Mr. Pelletier with a copy of this letter. If you have any questions, please call us at (601) 576-6940.

Sincerely,

Greg Williamson
Review and Compliance Officer

FOR: H.T. Holmes
State Historic Preservation Officer



Nationwide Infrastructure Support Technical Assistance Consultants

A Joint Venture of URS Group, Inc. and Dewberry & Davis, LLC

May 19, 2011

Mr. Michael Grisham
Environmental Liaison Officer
Mississippi Recovery Office
220 Popps Ferry Road, Building A South
Biloxi, MS 39531

RE: Section 106 Compliance Summary – Relocation and Replacement of the City of Bay St. Louis Rutherford Community Pier and Development of a Municipal Harbor and Facilities on the West Bank of St. Louis Bay, Hancock County, Mississippi

Dear Mr. Grisham,

The City of Bay St. Louis, Mississippi (City) has applied to the Federal Emergency Management Agency (FEMA) for funds through the Public Assistance (PA) Program to reconstruct the Rutherford Pier (Declaration Number FEMA-1604-DR-MS, Project Worksheet Number 641). The City would utilize FEMA funds, in conjunction with United States Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funds, and other public funding sources, to relocate and reconstruct the Rutherford Pier in conjunction with the construction of proposed Bay St. Louis Municipal Harbor. When completed, the municipal harbor and Rutherford Pier would allow the city to operate the public access facility which would provide opportunities for recreational access to the beach and ocean for boaters, fishermen, and the general public. In addition, the project would aid in the recovery and re-development of the historic downtown that was significantly damaged by Hurricane Katrina.

In accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, PL 93-288, as amended, and implementing regulations at 44 Code of Federal Regulations (CFR) Part 206, an Environmental Assessment (EA) is being prepared in accordance with FEMA's National Environmental Policy Act (NEPA) regulations found in 44 CFR Part 10. The City has contracted to Brown & Mitchell, Inc. (BMI) to prepare the EA. On behalf of FEMA, Nationwide Infrastructure Support Technical Assistance Consultants (NISTAC) was contracted to assist FEMA in the project's compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. This letter provides a summary of Section 106 compliance activities related to the above mentioned project.

Prior to the request for FEMA funding for the proposed replacement and relocation of Rutherford Pier, the City had initiated the HUD environmental review process, in compliance with HUD NEPA requirements for the use of CDBG grant funds. In addition, BMI had submitted a 404/Section 10 Permit Application with the United States Army Corps of Engineers (USACE) for the proposed Bay St., Louis Municipal Harbor Project and Rutherford Pier Relocation. In preparation of the Environmental Record Reviews (ERRs) for the HUD CDBG Program and the USACE permit application, several components of the overall project were

submitted to applicable resource agencies for project review, including State and Tribal Historic Preservation Offices. A summary of prior Section 106 consultations is provided below.

As part of the 404/Section 10 Permit Application with the USACE for the proposed Bay St., Louis Municipal Harbor Project and Rutherford Pier Relocation, BMI completed an EA. The EA, dated December 2, 2009, was submitted to the USACE and the Department of Marine Resources in Biloxi, MS. The USACE utilized previous consultation with the MDAH to make their determination of effects. Previous consultation included a letter dated July 15, 2002 from MDAH to the USACE regarding a proposed shoreline protection project on North Beach Boulevard near Bay St. Louis. MDAH determined that no historic properties would be affected and had “no reservations with the proposal.” Additionally, in a letter dated July 7, 2006 from MDAH to the USACE, MDAH stated that they had “no reservations with any of the findings or recommendations contained” in the Interim Report for the Mississippi Coastal Improvements Program Environment Assessment (MDAH Project Log #05-186-06). The USACE consulted with the Alabama-Coushatta Tribe of Texas, and in a letter dated January 6, 2010, the Alabama-Coushatta Tribe of Texas requested notification of any unanticipated discoveries of human remains and/or archaeological resources.

MDAH received project information from the Department of Marine Resources on February 8, 2010 as stated in their response letter dated February 26, 2010 regarding the proposed concrete walkway/breakwater, channel markers, platforms and decks on West Beach Boulevard (MDAH Project Log #02-055-10). MDAH recommend that “a cultural resources survey be performed along the beach”, due to the presence of several recorded archaeological sites in the vicinity, including a “shell midden possibly associated with the Ramsey Mound Site [22Ha528] extending into the bay.” No additional consultation related to MDAH Project Log #02-055-10 was obtained.

To assist in the compliance efforts with HUD NEPA requirements for the use of CDBG grant funds, the City has contracted to Jimmy G. Gouras, Urban Planning Consultants, Inc. (Gouras Planning) to prepare agency coordination letters to the appropriate tribal entities and the Mississippi Department of Archives and History (MDAH). In a letter dated March 18, 2009, Gouras Planning requested the MDAH make a determination and complete an attached preliminary environmental assessment form for the project. Included in their submission to the MDAH was a project description, maps identifying the project location, a plan of the proposed harbor and marina, and a budget summary for the project. MDAH responded in a letter dated March 30, 2009 with a determination that no cultural resources are likely to be affected. Therefore, MDAH had no objection to the proposed construction of the Municipal Pier and Harbor (MDAH Project Log #03-142-09). However, should there be additional work in connection with the project, or any changes in the scope of work, the MDAH requested their office be notified.

Additional correspondence from the MDAH to Gouras Planning includes a letter dated May 10, 2010 regarding the proposed downtown waterfront parking lot and access project (MDAH Project Log #04-130-10). The letter states that MDAH received a request for a cultural resources assessment on April 19, 2010. MDAH determined due to the number of recorded archaeological sites in or in close proximity to the project area, including a historic ammunition magazine

directly adjacent to the area of impact, that a cultural resources survey should be performed. Additionally, MDAH stated that the project is in or adjacent to the National Register of Historic Places (NRHP) Historic District and therefore requested elevation drawings in order to assess the visual impact to the district. Gouras Planning provided additional information as stated in the response letter dated September 13, 2010 from the MDAH, where after review, determined that a cultural resources survey will not be necessary. MDAH stated that while they have no further objections to the project, reiterated the presence of recorded archaeological sites in close proximity to the project area. The original submittals from Gouras Planning to MDAH regarding MDAH Project Log #04-130-10 were not obtained.

Gouras Planning has additionally requested comments from Native American Groups known to have a traditional cultural interest in Hancock County. In letters dated March 18, 2009, Gouras Planning requested a determination and to complete an attached preliminary environmental assessment form from the Choctaw Nation of Oklahoma and the Mississippi Band of Choctaw Indians. An April 3, 2009 response, the Choctaw Nation of Oklahoma, stated that the area is unlikely to have intact cultural deposits due to construction and other disturbance. However, if unrecorded cultural resources would be encountered during construction activities, their office should be contacted and extended the opportunity for response. To date, no comment has been received from the Mississippi Band of Choctaw Indians.

FEMA's evaluation of prior agency consultation and coordination by BMI and Gouras Planning on behalf of the City, determined that the cumulative project was not fully evaluated for potential impacts to cultural resources and that additional consultation with the MDAH and the Mississippi Band of Choctaw Indians was required for Section 106 compliance. As a result, FEMA initiated consultation in accordance with Section 106 of the NHPA of 1966, as amended, with both agencies for the proposed Bay St. Louis Municipal Harbor and Rutherford Pier Relocation Project. FEMA utilized project information and prior studies performed for the proposed harbor project, MDAH site files, and online and published research. In addition, FEMA coordinated with the USACE Mobile District regarding the Bay St. Louis Seawall Project, which extends along the Beach Boulevard and the proposed harbor site. FEMA determined that based on the proximity and nature of existing and potential archaeological historic properties, a Phase I underwater archaeological survey was warranted. For above-ground resources, FEMA determined that based on the fact that the shoreline adjacent to the Old Bay St. Louis Historic District has traditionally been occupied by various types of buildings and structures, the proposed project would have no adverse effect on the Historic District. The SHPO concurred with FEMA's determinations in a response letter dated January 20, 2011.

Although FEMA did not recommend a Phase I terrestrial survey as the project area was already covered by at least five feet of sand fill by the USACE, the Tribal Historic Preservation Officer (THPO) with the Mississippi Band of Choctaw Indians requested a terrestrial survey in addition to the marine survey. FEMA informed the THPO that the terrestrial survey would not be possible due to the already existing sand fill.

On behalf of FEMA, NISTAC was contracted to complete a Phase I marine remote sensing survey for the entire Bay St. Louis Municipal Pier and Harbor Project area. The Area of Potential Effects (APE) for this project is approximately 118.34 acres, located east of North Beach

Boulevard and bounded by the Chessie Seaboard Multiplier (CSX) railroad bridge to the south and Demontluzin Street to the north. The project location fronts the Old Bay St. Louis Historic District, which was listed in the NRHP on July 8, 2010 as a result of post-Katrina re-evaluation.

The scope of work for this undertaking was designed in consultation with, and was subsequently approved by, FEMA. Investigations were conducted in accordance with *Guidelines for Archaeological Investigations and Reports in Mississippi* (2001), and the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* (Federal Register 48, No 190, 1983). Prior research and analysis suggested that there was a moderate probability to encounter a shipwreck in the survey area. Evidence for historic structures along the Bay St. Louis shoreline were also expected, particularly the remains of bridges, docks, and piers constructed and destroyed by the natural disasters over the years. The primary objectives of the study were to identify all submerged and visible watercraft, as well as any other maritime-related cultural resources within the APE, and to provide any newly identified resources a preliminary assessment of eligibility for listing in the NRHP.

The marine remote sensing survey was conducted in March of 2011 along parallel track lines spaced at 50-foot intervals. The technical implementation of the survey utilized positioning (Hemisphere Crescent R130 DGPS), magnetic survey (Geometrics G882 marine magnetometer), side scan sonar (Marine Sonic Centurion 600-Kilohertz), echo sounding (Odom Hydrotrac digital fathometer) with data and positioning quality controlled with Hypack's survey software and remote sensing data field-analyzed utilizing the Hypack data review module and Golden Software's Surfer (Version 8).

Twenty-nine acoustic anomalies and 322 magnetic perturbations were recorded, from which 51 target clusters were identified. None of the 51 target clusters appear to have the potential to represent significant submerged cultural resources. They are instead consistent with debris from the destruction of Bay St. Louis's waterfront and piers, the former CSX railroad bridge, and the former Rutherford Pier. Four modern boats and several spans of a possible pipeline or cable were also identified. These spans should be avoided due to the potential hazard of an exposed pipeline or cable to people and the environment. No further work is recommended for this project area. FEMA transmitted the Phase I Marine Remote Sensing Survey Report for the Bay St. Louis Municipal Pier and Harbor Project to the SHPO and the Mississippi Band of Choctaw Indians on May 4, 2011 for comment. No response to date.

If you have any questions, please do not hesitate to contact me at (301) 258-3292. I can also be reached via email at carrie_albee@urscorp.com.

Sincerely,

A handwritten signature in cursive script that reads "Carrie Albee".

Carrie E. Albee
Architectural History Team Lead



FEMA

U.S. Department of Homeland Security
Federal Emergency Management Agency
Mississippi Recovery Office
Physical Address
220 Poppo Ferry Rd.
Building A South
Biloxi, MS 39532

May 02, 2011

Mr. Greg Williamson
FEMA Point of Contact
Mississippi Department of Archives and History
Historic Preservation Division
P.O. Box 571
Jackson, MS 39205-0571

Re: Draft Report – Phase 1 Marine Archaeological Remote Sensing Survey for the Bay St. Louis Municipal Pier and Harbor Project (MDAH Project Log #12-159-10), Hancock County, Mississippi

Dear Mr. Williamson:

Enclosed please find one (1) hard copy of the review draft of the above-referenced archaeological report. We look forward to receiving your comments.

If you have any questions, please do not hesitate to contact me at (228) 239-4035. I can also be reached via email at paul.a.drummond@dhs.gov.

Sincerely,

Paul Drummond
Deputy Environmental Liaison Officer



FEMA

U.S. Department of Homeland Security
Federal Emergency Management Agency
Mississippi Recovery Office
Physical Address
220 Poppo Ferry Rd.
Building A South
Biloxi, MS 39532

May 02, 2011

Mr. Ken Carleton
Tribal Historic Preservation Officer
Mississippi Band of Choctaw Indians
101 Industrial Road
Choctaw, MS 39305

Re: Draft Report – Phase 1 Marine Archaeological Remote Sensing Survey for the Bay St. Louis Municipal Pier and Harbor Project, Hancock County, Mississippi

Dear Mr. Carleton:

Enclosed please find one (1) hard copy of the review draft of the above-referenced archaeological report. We look forward to receiving your comments.

A Phase 1 Terrestrial Survey was not possible due to the USACE Seawall/Beach Replenishment Project. Prior to our initial consultations, the USACE had already placed approximately 5 feet of sand fill over all of the land areas affected by this project.

If you have any questions, please do not hesitate to contact me at (228) 239-4035. I can also be reached via email at paul.a.drummond@dhs.gov.

Sincerely,

Paul Drummond
Deputy Environmental Liaison Officer



PO Box 571, Jackson, MS 39205-0571

601-576-6850 • Fax 601-576-6975

mdah.state.ms.us

H.T. Holmes, Director

January 20, 2011

Mr. Michael Grisham
Environmental Liaison Officer
FEMA-DR-1604-MS
220 Popps Ferry Road, Bldg. A South
Biloxi, Mississippi 39531

RE: Effect Determination for Proposed Relocation and Replacement of the City of
Bay St. Louis Rutherford Community Pier and Development of a Municipal
Harbor Facility on the West Bank of St. Louis Bay, FEMA 1604-DR-MS PA
MDAH Project Log # 12-159-10, Hancock County

Dear Michael:

We have reviewed your project description and determination, received December 30, 2010, for the above referenced undertaking with a request for concurrence, in accordance with our responsibilities under Section 106 of the National Historic Preservation Act and 36 CFR Part 800. After reviewing the information provided, due to the proximity of the Ramsey Mound and likelihood of archaeological resources in the APE of the project, that a Phase I cultural resources survey should be performed. We also concur with FEMA's determination that the project will have no adverse effect on the Old Bay St. Louis Historic District.

If you have any questions, please call us at (601) 576-6940.

Sincerely,


Greg Williamson
Review and Compliance Officer

FOR: H.T. Holmes
State Historic Preservation Officer

From: Carleton, Ken [KCarleton@choctaw.org]
Sent: Tuesday, February 15, 2011 15:18
To: Drummond, Paul
Cc: Mann jr, Cyril
Subject: RE: Bay St. Louis Rutherford Pier/Municipal Harbor

February 15, 2011

I have reviewed the information related to the Bay St. Louis Rutherford Pier/Municipal Harbor replacement project. Given that this area is known to have contained an 18th century American Indian site and that there have been 18th and early 19th century artifacts recorded in the vicinity of the project area, it is vital that a full Phase I archaeological survey be conducted to insure that this new construction will not damage or destroy any archaeological deposits which may be present in the construction foot print. While the probability of them being present is low, there is also the possibility that American Indian burials may be present in the area. We therefore concur with FEMA's determination that a Phase I archaeological survey needs to be completed. We also concur that an underwater survey in the area to be impacted by this construction be conducted, since we have no knowledge at all of what may be on or in the sea-floor in this location.

Kenneth H. Carleton
THPO/Archaeologist
Mississippi Band of Choctaw Indians
601.650.7316

From: Drummond, Paul [<mailto:paul.a.drummond@dhs.gov>]
Sent: Tuesday, February 15, 2011 2:30 PM
To: Carleton, Ken
Subject: Bay St. Louis Rutherford Pier/Municipal Harbor

Mr. Carleton,

I have attached the Section 106 consultation letter concerning the relocation of the Rutherford Pier and construction of the City of Bay St. Louis Municipal Harbor for your review. Please do not hesitate to contact me or Baxter with any questions or concerns.

Thank you,

Paul A. Drummond
Deputy Environmental Liaison Officer
Federal Emergency Management Agency
Mississippi Recovery Office
Cell: 228-239-4035
Desk: 228-594-2960
Fax: 228-385-7684



FEMA

U.S. Department of Homeland Security
Federal Emergency Management Agency
Mississippi Recovery Office
220 Poppo Ferry Rd.
Biloxi, MS 39531

December 28, 2010

Mr. Greg Williamson
Review and Compliance Officer
Mississippi Department of Archives and History
Historic Preservation Division
P.O. Box 571
Jackson, MS 39205-0571

RE: Request for Section 106 Concurrence – Relocation and Replacement of the City of Bay St. Louis Rutherford Community Pier and Development of a Municipal Harbor and Facilities on the West Bank of St. Louis Bay

Dear Mr. Williamson:

As a result of the damage caused by Hurricane Katrina on August 29, 2005 and the days following, a Presidential disaster declaration, referenced as FEMA-1604-DR-MS, makes Federal Emergency Management Agency (FEMA), Public Assistance (PA) funding available throughout the state of Mississippi. The purpose of FEMA's PA program is to provide funding to restore damaged facilities to their pre-disaster condition, or to a condition sufficient to perform their pre-disaster functions. One PA project, referenced as PW #641, involves the demolition of the old Rutherford pier and the construction of a new Community Pier in the City of Bay St. Louis, MS. The pier will be located on Beach Blvd. adjacent to the new proposed municipal harbor facility.

Prior to Hurricane Katrina, the Rutherford Community Pier was located at the foot of Ulman Avenue at Beach Blvd. and provided public access to the water for fishing and enjoyment of natural resources to residents and visitors. Due to the pier's location on the Gulf of Mexico, the structure was destroyed by the tidal surge experienced during Katrina. Based on observations made by a local engineering firm, the City is requesting to relocate the pier to a parcel south of the existing site, next to a proposed municipal harbor basin. The proposed harbor will provide approximately 208 boat slips within a protected basin containing piers, walkways, sewer pump out facilities, fuel services, marine convenience store, and parking. The move to this location is based on the increased availability of public parking, restrooms, and greater safety for pedestrians. FEMA will not be funding the construction of the municipal harbor; however, since the addition of the new pier is included with the proposed municipal harbor, FEMA considers this a connected action; therefore, "federalizing" the entire project.

A FEMA Archaeologist (Paul Drummond) and Architectural Historian (Claudia Watson) qualified in their respective disciplines under the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61), conducted an assessment of the project's potential to affect historic properties within the Area of Potential Effects (APE). The APE

is the geographic area within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if such properties exist. For archaeological resources, the APE consists of the proposed site; for above-ground historic properties, the APE is extended out to a 0.5-mile radius around the proposed project site. This APE was previously established through FEMA consultation with the Mississippi State Historic Preservation Office (SHPO).

On December 1, 2010, Mr. Drummond and Mrs. Watson visited the project area to determine if any above-ground historic properties or archaeological sites listed in or eligible for listing in the National Register of Historic Places (NRHP) were visible. The USGS Topographic Map (Bay St. Louis, 7.5 Min) below shows that the project area is located in the eastern portion of the City of Bay St. Louis, Mississippi along the shoreline of St. Louis Bay. This area is characterized by a narrow man-made beach adjacent to a two-lane beach front road on top of a gently rising low ridge of land. The area for the pier removal measures 1,000 by 1,200 ft centered on the ruins of the Rutherford Pier and the proposed harbor project area is adjacent to the Bay St. Louis Railroad Bridge on the north side, and measures approximately 855 feet (north – south) by 4,100 feet (east - west). The entire harbor basin will be dredged to a depth of 6.5 feet with a 4100' long x 150' wide x 8' deep channel leading out to the main channel in the Bay.

The project area is situated adjacent to the eastern boundary of the NRHP-listed Old Bay St. Louis Historic District (listed 7/8/10 as a result of post-Katrina re-evaluation). Most dwellings and businesses within the project view shed were severely damaged or destroyed by Hurricane Katrina but many owners have begun to rebuild. FEMA has made a determination of “No Adverse Effect” for above-ground historic properties based on the fact that the shoreline adjacent to the Historic District has traditionally been occupied by various types of buildings and structures. The addition of the harbor, pier, and facilities will have a positive effect on the district by encouraging redevelopment in this area and public engagement with the waterfront. FEMA requests SHPO concurrence or comments on this determination.

A review of the Mississippi Archaeological Survey and Site maps located at the Mississippi Department of Archives and History (MDAH) reveal that several terrestrial archaeological surveys have been conducted within a 2-mile radius of the project area including 95-173, 06-263, 07-115, and 07-131 but no underwater surveys have been executed. At least four (4) known sites are within a 2-mile radius including 22-Ha-541, 22-Ha-553, 22-Ha-556 (ammunition magazine adjacent to site), and 22-Ha-613 (Ramsey Mound site).

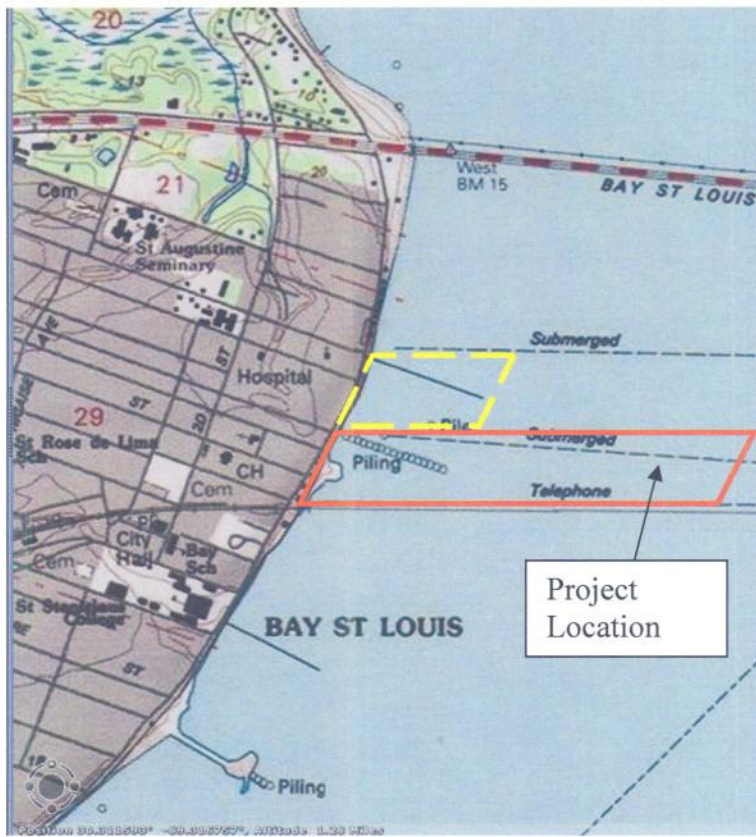
FEMA has determined that the area consisting of the remains of the Rutherford Pier needs to be surveyed to aid in piling removal and to insure that there are no resulting impacts on submerged cultural resources. In addition, the construction of the proposed municipal harbor facility could potentially affect NRHP-eligible archaeological resources, if present. FEMA recommends that a Phase I underwater archaeological investigation be performed in the archaeological APE to determine the existence of any unknown resources.

Brown & Mitchell, Inc in Gulfport, MS has been retained by the City of Bay St. Louis to prepare an Environmental Assessment (EA) for the proposed project. In compliance with the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), FEMA requests that your agency consider the proposed project and concur with FEMA's determination that it will have no adverse effect on above-ground historic properties, and that archaeological investigations are appropriate. FEMA would appreciate any information that you have on resources within the project area. If you have any questions or need additional information, please contact Paul Drummond by telephone at (228) 594-2960 or electronic mail at paul.a.drummond@dhs.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Grisham', with a stylized flourish at the end.

Michael Grisham
Environmental Liaison Officer
FEMA-1604-DR-MS



USGS Topographic Map (Bay St. Louis, 7.5 min). Area in yellow contains the ruins of the old Rutherford Pier and area in orange represents the proposed Municipal Harbor.



Aerial view of project area. Ruins of the old Rutherford Pier can be seen in the upper-right. The new pier and harbor will be located directly north of the train bridge.



Photo 1 - Overview of project area showing ruins of the former Rutherford Pier. Northwest facing southeast

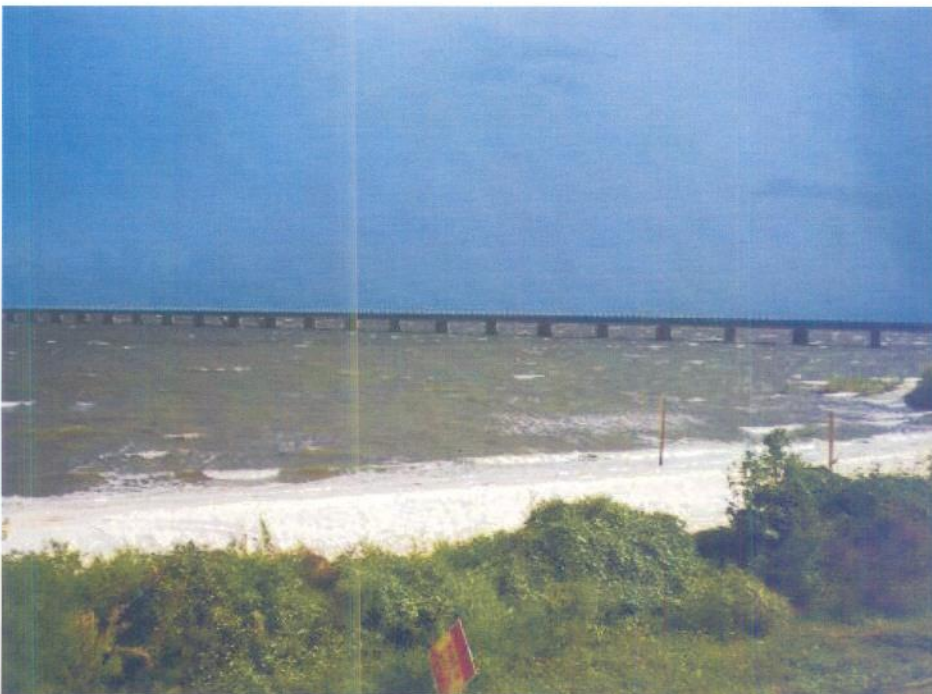


Photo 2 - Overview of Municipal Harbor Site. Northwest facing southeast.



Photo 3 – Street View of the Eastern Boundary of the Old Bay St. Louis Historic District. Harbor and Pier project area on left. North facing South.



Photo 4 – Main St. and Beach Blvd. Directly across from Harbor and Pier project area. East facing West.



Photo 5 – Street View of the Eastern Boundary of the Old Bay St. Louis Historic District. Harbor and Pier project area north of Railroad tracks. North facing South.



Photo 6 – Street View of the Eastern Boundary of the Old Bay St. Louis Historic District. Harbor and Pier project area on the right. South facing North.



FEMA

U.S. Department of Homeland Security
Federal Emergency Management Agency
Mississippi Recovery Office
220 Popps Ferry Rd.
Biloxi, MS 39531

December 28, 2010

Mr. Kenneth H. Carleton
Tribal Historic Preservation Officer
Mississippi Band of Choctaw Indians
101 Industrial Road
Choctaw, MS 39305

RE: Request for Section 106 Concurrence – Relocation and Replacement of the City of Bay St. Louis Rutherford Community Pier and Development of a Municipal Harbor and Facilities on the West Bank of St. Louis Bay

Dear Mr. Carleton:

As a result of the damage caused by Hurricane Katrina on August 29, 2005 and the days following, a Presidential disaster declaration, referenced as FEMA-1604-DR-MS, makes Federal Emergency Management Agency (FEMA), Public Assistance (PA) funding available throughout the state of Mississippi. The purpose of FEMA's PA program is to provide funding to restore damaged facilities to their pre-disaster condition, or to a condition sufficient to perform their pre-disaster functions. One PA project, referenced as PW #641, involves the demolition of the old Rutherford pier and the construction of a new Community Pier in the City of Bay St. Louis, MS. The pier will be located on Beach Blvd. adjacent to the new proposed municipal harbor facility.

Prior to Hurricane Katrina, the Rutherford Community Pier was located at the foot of Ulman Avenue at Beach Blvd. and provided public access to the water for fishing and enjoyment of natural resources to residents and visitors. Due to the pier's location on the Gulf of Mexico, the structure was destroyed by the tidal surge experienced during Katrina. Based on observations made by a local engineering firm, the City is requesting to relocate the pier to a parcel south of the existing site, next to a proposed municipal harbor basin. The proposed harbor will provide approximately 208 boat slips within a protected basin containing piers, walkways, sewer pump out facilities, fuel services, marine convenience store, and parking. The move to this location is based on the increased availability of public parking, restrooms, and greater safety for pedestrians. FEMA will not be funding the construction of the municipal harbor; however, since the addition of the new pier is included with the proposed municipal harbor, FEMA considers this a connected action; therefore, "federalizing" the entire project.

A FEMA Archaeologist (Paul Drummond) and Architectural Historian (Claudia Watson) qualified in their respective disciplines under the Secretary of the Interior's Professional Qualifications Standards (36 CFR Part 61), conducted an assessment of the project's potential to affect historic properties within the Area of Potential Effects (APE). The APE is the geographic area within which an undertaking may directly or indirectly cause

changes in the character or use of historic properties, if such properties exist. For archaeological resources, the APE consists of the proposed site; for above-ground historic properties, the APE is extended out to a 0.5-mile radius around the proposed project site. This APE was previously established through FEMA consultation with the Mississippi State Historic Preservation Office (SHPO).

On December 1, 2010, Mr. Drummond and Mrs. Watson visited the project area to determine if any above-ground historic properties or archaeological sites listed in or eligible for listing in the National Register of Historic Places (NRHP) were visible. The USGS Topographic Map (Bay St. Louis, 7.5 Min) below shows that the project area is located in the eastern portion of the City of Bay St. Louis, Mississippi along the shoreline of St. Louis Bay. This area is characterized by a narrow man-made beach adjacent to a two-lane beach front road on top of a gently rising low ridge of land. The area for the pier removal measures 1,000 by 1,200 ft centered on the ruins of the Rutherford Pier and the proposed harbor project area is adjacent to the Bay St. Louis Railroad Bridge on the north side, and measures approximately 855 feet (north – south) by 4,100 feet (east - west). The entire harbor basin will be dredged to a depth of 6.5 feet with a 4100' long x 150' wide x 8' deep channel leading out to the main channel in the Bay.

The project area is situated adjacent to the eastern boundary of the NRHP-listed Old Bay St. Louis Historic District (listed 7/8/10 as a result of post-Katrina re-evaluation). Most dwellings and businesses within the project view shed were severely damaged or destroyed by Hurricane Katrina but many owners have begun to rebuild. FEMA has made a determination of “No Adverse Effect” for above-ground historic properties based on the fact that the shoreline adjacent to the Historic District has traditionally been occupied by various types of buildings and structures. The addition of the harbor, pier, and facilities will have a positive effect on the district by encouraging redevelopment in this area and public engagement with the waterfront.

A review of the Mississippi Archaeological Survey and Site maps located at the Mississippi Department of Archives and History (MDAH) reveal that several terrestrial archaeological surveys have been conducted within a 2-mile radius of the project area including 95-173, 06-263, 07-115, and 07-131 but no underwater surveys have been executed. At least four (4) known sites are within a 2-mile radius including 22-Ha-541, 22-Ha-553, 22-Ha-556 (ammunition magazine adjacent to site), and 22-Ha-613 (Ramsey Mound site).

FEMA has determined that the area consisting of the remains of the Rutherford Pier needs to be surveyed to aid in piling removal and to insure that there are no resulting impacts on submerged cultural resources. In addition, the construction of the proposed municipal harbor facility could potentially affect NRHP-eligible archaeological resources, if present. FEMA recommends that a Phase I underwater archaeological investigation be performed in the archaeological APE to determine the existence of any unknown resources.

Brown & Mitchell, Inc in Gulfport, MS has been retained by the City of Bay St. Louis to prepare an Environmental Assessment (EA) for the proposed project. In compliance with

the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA), FEMA requests that the Mississippi Band of Choctaw Indians consider the proposed project and concur with FEMA's determination that archaeological investigations are appropriate. FEMA would appreciate any information that you have on resources within the project area. If you have any questions or need additional information, please contact Paul Drummond by telephone at (228) 594-2960 or electronic mail at paul.a.drummond@dhs.gov.

Sincerely,



Michael Grisham
Environmental Liaison Officer
FEMA-1604-DR-MS

USACE Permit

DEPARTMENT OF THE ARMY PERMIT

Permittee: CITY OF BAY SAINT LOUIS

Permit No.: SAM-2009-01763-MJF

Issuing Office: MOBILE DISTRICT

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U. S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The permittee is authorized to perform certain work in waters of the United States associated with the construction of a municipal harbor which would be located along the shoreline of the Bay of St. Louis between the CSX Railroad Bridge and Demontluzin Avenue. The municipal harbor will be a sheltered basin with flow through breakwater structures, piers, decks, and walkways, mooring piles, channel markers, sewer pump out facilities, fuel service and marine convenience store, and parking for the users and visitors. Dredging operations associated with the harbor will consist of dredging an area measuring 1,200 feet in length and 850 feet in width from an existing depth ranging from 0 to 6 feet below mean lower low water (mllw) to a proposed depth of 8 feet below mllw to create the harbor basin. An area measuring 4,100 feet in length and 150 feet in width will be dredged from an existing depth ranging of 6.5 to 8 feet below mllw to 8 feet below mllw for an access channel to the harbor basin. The total volume of dredge material to be removed for the project is estimated to be approximately 150,000 cubic yards. Of the 150,000 cubic yards of material being dredged, 100,000 cubic yards will be used for beach renourishment on Hancock County beaches, 40,000 cubic yards will be used for construction fill behind the planned bulkhead, and 10,000 cubic yards of material will be designated for beneficial use at an approved COE and DMR Beneficial Use site.

Structures for the 208-slip harbor include: 3,550 linear feet of mainline piers measuring 10 feet in width, 4,049 linear feet of finger piers measuring 4 feet in width, 13,290 square feet of decking, 216 single-pile mooring piles, 10 single-pile channel day markers, 5 electrical platforms each measuring 10 feet in length and 10 feet in width, a concrete bulkhead 985 feet in length, a timber pile breakwater 100 feet in length, a concrete pier/walkway 1,780 feet in length and 12 feet in width and associated concrete breakwater 1,780 feet in length. In addition, the north boundary of the harbor will consist of a public pier measuring 1,200 feet in length and 10 feet in width with an attached 1,200 foot vinyl sheetpile flow-through breakwater. Accessory structures for this pier will include a terminal pavilion measuring 30 feet in length and 20 feet in width and three (3) fishing piers each measuring 40 feet in length and 10 feet in width with a terminal t-shaped pier measuring 30 feet in length and 10 feet in width.

- ATTACHED:
1. Vicinity Map
 2. Site Plan
 3. National Marine Fisheries Service Biological Opinion dated 18 January 2011.
 4. United States Fish and Wildlife Service Biological Opinion dated 19 October 2010.
 5. Mississippi Department of Marine Resources (DMR) Coastal Program Certification dated 16 March 2010.
 6. Mississippi Department of Environmental Quality (DEQ) Section 401 Certification dated 13 August 2010

Project Location: The project is located East of Beach Boulevard on the north side of the CSX Railroad Bridge in Section 29, Township 8 South, Range 13 West, Mississippi Sound, Bay St. Louis, Hancock County, Mississippi (Latitude 30.31078° North, Longitude -89.31752° West).

Permit Conditions

General Conditions:

1. The time limit for completing the work authorized ends on 23 February 2016. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and

conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

a. Material dredged from the harbor basin shall be utilized as construction fill on location and beach renourishment within Hancock County. Approximately 10,000 cy of fill would be placed in the Corps and DMR approved Beneficial Use Area located at Bayou Caddy. No work shall commence until approval has been granted. The Permittee shall provide a copy to this office for review before any work is to commence. For additional information please contact Dr. Susan I. Rees at 251-694-4141.

b. The permittee shall comply with all requirements of the Mississippi Department of Environmental Quality 401 Water Quality Certification (WQC22009091) dated August 13, 2010.

c. The permittee shall comply with all requirements of the Mississippi Department of Marine Resources Coastal Zone Consistency Determination (DMR-100249) dated March 16, 2010.

d. This COE permit does not authorize you to take an endangered species, in particular the Piping Plover, the Gulf sturgeon, and sea turtles. In order to legally take a listed species, you must have separate authorization under the ESA (e.g., an ESA Section 10 permit, or a BO (Biological Opinion) under ESA Section 7, with "incidental take" provisions with which you must comply). The enclosed (FWS and NMFS) BOs contain mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BOs. Your authorization under this COE permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BOs, which terms and conditions associated with incidental take of the BOs, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your COE permit. The USFWS and NMFS are the appropriate authorities to determine compliance with the terms and conditions of its BOs, and with the ESA.

e. The permittee shall coordinate all final draft and final drawings with the COE MsCIP office for concurrence before construction shall begin. The POC for the COE MsCIP is Mr. Tom Smith at (251)690-3270.

f. Should artifacts or archaeological features be encountered during project activities, all heavy equipment operations within a 35-foot buffer surrounding the potentially significant artifact(s) or the observation would cease and the Office of Housing and Urban Development, Corps and the State Historic Preservation Officer shall be consulted immediately.

g. In the event the permit is transferred, proof of delivery of a copy of the notification of permit transfer must be provided to the Corps.

h. Only suitable material free of waste, metal, organic trash, unsightly debris, etc., may be used as fill, and material discharged must be free from toxic pollutants in toxic amounts.

i. Project construction shall be conducted in such a manner that the passage of normal and expected high flows of surface water runoff outside the project boundaries is not restricted or otherwise altered.

j. Best management practices shall be implemented to minimize erosion, siltation and damage to adjacent wetlands and waters of the United States. Appropriate erosion and siltation control measures must be used and maintained in effective operating condition.

during construction. All temporary erosion control features shall remain in place until permanent stabilization measures have been completed and have become fully effective.

k. The permittee shall comply with the local flood damage ordinance and the regulations of the National Flood Insurance Program. The project cannot cause ponding or flooding on adjacent properties.

l. All excavation and fill activities shall be performed in a manner that minimizes disturbance and turbidity increases in "waters of the United States" and wetlands; and shall be retained in a manner to preclude its erosion into any adjacent wetlands or waterway.

m. The Permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

☒ Section 404 of the Clean Water Act (33 U.S.C. 1344).

☒ Section 10 of the Rivers and Harbors Act 1899.

2. Limits of this authorization

a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law

b. This permit does not grant any property rights or exclusive privileges

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit

d. Design or construction deficiencies associated with the permitted work

e. Damage claims associated with any future modification, suspension, or revocation of this permit

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit

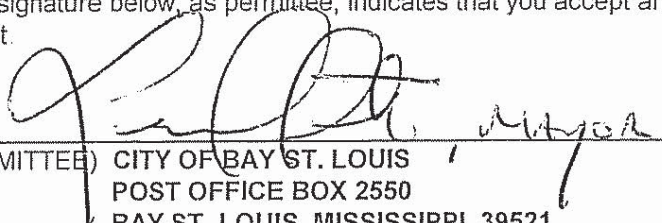
b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above)

c Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

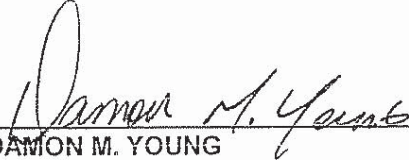
Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


(PERMITTEE) CITY OF BAY ST. LOUIS
POST OFFICE BOX 2550
BAY ST. LOUIS, MISSISSIPPI 39521

2/23/2011
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

STEVEN J. ROEMHILDT, P.E.
COLONEL, DISTRICT COMMANDER

BY:  3/9/11
DAMON M. YOUNG
MISSISSIPPI TEAM LEADER
COASTAL BRANCH
REGULATORY DIVISION
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFeree)

(DATE)

NMFS BIOLOGICAL OPINION



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office
263 13th Avenue South
St. Petersburg, FL 33701-5505
(727) 824-5312; FAX 824-5309
<http://sero.nmfs.noaa.gov>

F/SER31:RGH

JAN 18 2011

Ms. Maryellen J. Farmer
Mobile District Corps of Engineers
P.O. Box 2288
Mobile, AL 36628-0001

RE: SAM-2009-1763 (MJF)


Dear Ms. Farmer:

The enclosed document constitutes the National Marine Fisheries Service's (NMFS) biological opinion (opinion) based on our review of the U.S. Army Corps of Engineers, Mobile District's (COE) request for formal consultation on the effects of permitting the construction and operation of the City of Bay St. Louis Marina and re-construction and operation of the Rutherford Fishing Pier, in Hancock County, Mississippi. The proposed action would create a recreational harbor which would provide approximately 208 boat slips within a man-made protected basin. The harbor would include a sheltered basin, piers, walkways, sewer pump-out facilities, fuel services, marine convenience store, and parking for users and visitors. This opinion is based on project-specific information provided by the COE, the applicant, and the applicant's consultants as well as NMFS' review of published literature.

The opinion analyzes the proposed action's effects on Gulf sturgeon, Gulf sturgeon critical habitat, and sea turtles. NMFS concludes that the action, as proposed, may affect, but is not likely to adversely affect, Gulf sturgeon or its designated critical habitat. NMFS further concludes the project is not likely to adversely affect green, hawksbill, or leatherback sea turtles, and is not likely to jeopardize the continued existence of loggerhead or Kemp's ridley sea turtles.

We look forward to further cooperation with you on other COE projects to ensure the conservation of our threatened and endangered marine species and designated critical habitat. If you have any questions, please contact Ryan Hendren, ESA Consultant, at (727) 551-5610, or by e-mail at Ryan.Hendren@noaa.gov.

Sincerely,



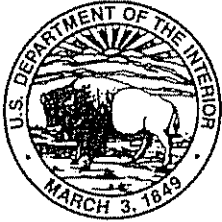
Roy E. Crabtree, Ph.D.
Regional Administrator

Enclosure

File: 1514-22.F.6
Ref: F/SER/2010/01441



USFWS BIOLOGICAL OPINION



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Mississippi Field Office
6578 Dogwood View Parkway, Suite A
Jackson, MS 39213

October 19, 2010



Farmer

Ms. Maryellen Farmer
U.S. Army Corps of Engineers
Mobile District, Corps of Engineers
P.O. Box 2288
Mobile, Alabama 36628-0001

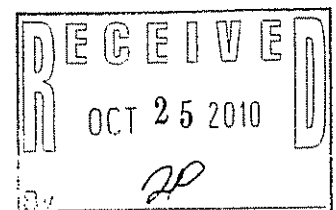
Dear Ms. Farmer:

This document is the Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed City of Bay St. Louis Recreational Harbor located in Hancock County, Mississippi, and its effects on the piping plover (*Charadrius melodus*) per section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.). The Service's Mississippi Field Office received your formal consultation request on June 7, 2010.

This biological opinion is based on information provided in the June 2, 2010 Biological Assessment, electronic mail (emails), telephone conversations, field investigations, and other sources of information. A complete administrative record of this consultation is on file at the Service's Mississippi Field office.

Consultation History

- October 27, 2008 The Service, at the request of the Corps, participates in a meeting with agency representatives and permittee representatives to discuss the upcoming Bay St. Louis Recreational Harbor project.
- July 27, 2009 The Service participates in a second pre-application meeting with agency representatives and permittee representatives to discuss the revised plans for the Bay St. Louis Recreational Harbor project.
- November 20, 2009 The Service participates in a third pre-application meeting with agency representatives and permittee representatives to discuss the revised plans for the Bay St. Louis Recreational Harbor project.
- December 18, 2009 The Corps publishes a Public Notice on the subject project.



January 15, 2010 The Service requested an extension of time, until February 7, 2010, in order to comment on the Public Notice.

January 15, 2010 The Corps grants the Service's request for an extension of time.

February 5, 2010 The Service sends comments to the Corps on the Public Notice. Comments included the request for the applicant to submit a Biological Assessment for impacts to piping plover and its Critical Habitat.

April 8, 2010 The consultant submits a Biological Assessment to the Service for review.

May 6, 2010 The Service coordinates with the consultant via telephone regarding the need to update/add additional information to the Biological Assessment.

June 2, 2010 The Service receives a second draft of the Biological Assessment.

June 7, 2010 The Service receives a letter from the Corps requesting initiation of formal Section 7 consultation.

June 7, 2010 The Service sends a request (via email) to the Corps initiating formal Section 7 consultation.

August 12, 2010 The Service conducts a site visit along with consultant (Larry Lewis) and Mississippi Department of Wildlife Fisheries and Parks (Nick Winstead).

October 4, 2010 The Service sends a Draft Biological Opinion to the Corps and the applicant's agent.

October 19, 2010 The Service delivers a revised final BO to the Corps.

FWS log No: 43910-2010-F-0743

Date Started: June 7, 2010

USACOE Permit # SAM 2009-01763-MJF

Applicant: City of Bay St. Louis

Action Agency: USACOE

Project Title: City of Bay St. Louis Recreational Harbor

County: Hancock

Table 1. Species and Critical Habitat Evaluated for Effects from the Proposed Action but not discussed further in this Biological Opinion.

SPECIES OR CRITICAL HABITAT	PRESENT IN ACTION AREA	PRESENT IN ACTION AREA BUT "NOT LIKELY TO ADVERSELY AFFECT"
Piping Plover	X	
Manatee		X

Only the piping plover will be discussed in this biological opinion. The listed species and critical habitat not impacted by this action will not be discussed further in this biological opinion (see Table 1).

1996). There is also the potential for increased disturbance by unleashed and leashed dogs accompanying pedestrians. Hoopes (1993) documented the disturbance of plovers from dogs.

Disturbance reduces the time migrating shorebirds spend foraging (Burger 1991). Pfister et al. (1992) implicate disturbance as a factor in the long-term decline of migrating shorebirds at staging areas. While piping plover migration patterns and needs remain poorly understood and occupancy of a particular habitat may involve shorter periods relative to wintering, information about the energetics of avian migration indicates that this might be a particularly critical time in the species' life cycle.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local, or private actions that are reasonably certain to occur in the adjacent areas considered in this biological opinion. An analysis of the cumulative effects considered the effects of future actions that are reasonably certain to occur in the project area. There are proposed beach renourishment projects by the USACOE and the Hancock County Board of Supervisors within the project area. Additionally, there is another proposed marina within the same critical habitat unit.

Impacts to the Action Area from the Deepwater Horizon MC 252 oil spill appears limited to tar balls, dispersants in the water, and increased human disturbance from clean-up and monitoring impacts. The final breadth of the oil spill impacts to the shoreline and shoreline dependent species remain unknown.

CONCLUSION

After reviewing the current status of the wintering populations of plovers, the environmental baseline for the proposed harbor construction site, and the indirect and cumulative effects, it is the Service's Biological Opinion that implementation of the project, as proposed, is not likely to jeopardize the continued existence of non-breeding piping plover. As noted previously, the overall status of the listed entity is stable, if not increasing. However, 850 linear feet of Critical Habitat Unit MS-01 will be completely lost. Additionally, adjacent critical habitat areas will have increased disturbance during piping plover wintering and migration seasons.

Ferland and Haig (2002) calculated from the 2001 International Plover Census results that 57% of wintering piping plover sites contained 1-10 birds, 36% contain 11-50 birds, and less than eight percent contain more than 50 piping plovers. Currently, the project area appears to be of minimal importance with regard to piping plovers since project area sightings are less than 10 birds.

The survival and recovery of all breeding populations of piping plovers are fundamentally dependent on the continued availability of sufficient habitat in their coastal migration and wintering range, where the species spends more than two-thirds of its annual cycle. All piping plover populations are inherently vulnerable to even small declines in their most sensitive vital rates, i.e., survival of adults and fledged juveniles. Mark-recapture analysis of resightings of uniquely banded piping plovers from seven breeding areas by Roche et al. (2009) found that

apparent adult survival declined in four populations and increased in none over the life of the studies. Some evidence of correlation in year-to-year fluctuations in annual survival of Great Lakes and eastern Canada populations suggests that shared over-wintering and/or migration habitats may influence annual variation in survival. Further concurrent mark-resighting analysis of color-banded individuals across piping plover breeding populations has the potential to shed light on threats that affect survival in the migration and wintering range.

Critical Habitat

The amount of Critical Habitat Unit MS-01 directly affected from the project is 850 linear feet of Bay of St. Louis shoreline. Additionally, the adjacent shoreline, which are within this same critical habitat unit, may be reduced in value by increased disturbance which may impede piping plovers attempting to roost and forage during migration months. The impacts to Unit MS-01 equates to less than 1% of designated critical habitat in Mississippi. Therefore, we conclude that the proposed action will not appreciably diminish the amount of constituent elements within critical habitat to the degree that conservation of the species would be affected and therefore, the project is not likely to destroy or adversely modify designated critical habitat.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered or threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by the USACOE so that they become binding conditions of any grant or permit issued to the permittee, as appropriate, for the exemption in section 7(o)(2) to apply. The USACOE has a continuing duty to regulate the activity covered by this incidental take statement. If the USACOE (1) fails to assume and implement the terms and conditions or (2) fails to require their contractors to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the permittee must report the progress of the action and its impacts on the species to the Service as specified in the incidental take statement [50 CFR §402.14(i)(3)].

AMOUNT OR EXTENT OF TAKE

The Service anticipates that directly and indirectly an unspecified amount of piping plovers could be taken in the form of harm and harassment as a result of this proposed action; however, incidental take of piping plovers will be difficult to detect for the following reasons:

- (1) harassment to the level of harm may only be apparent on the breeding grounds the following year; and
- (2) dead plovers may be carried away by waves or predators.

The level of take of this species can be anticipated by the proposed activities because (Table 11):

- (1) piping plovers migrate and winter in the Action Area;
- (2) the construction of the harbor will permanently remove critical habitat; and
- (3) increased levels of pedestrian disturbance is expected.

The take is expected in the form of harm and harassment because of:

- (1) decreased fitness and survivorship of wintering plovers due to loss and degradation of foraging and roosting habitat;
- (2) decreased fitness and survivorship of plovers attempting to migrate to breeding grounds due to loss of foraging and roosting habitat.

Table 11. Represents the amount of piping plover roosting and foraging habitat that will be affected by the project and the monitoring of incidental take for the proposed project

SPECIES	CRITICAL HABITAT AFFECTED	HABITAT AFFECTED	MONITORING
Piping plover	850 linear feet of habitat (CH Unit MS-01)	Over 850 linear feet of habitat will be affected by direct loss and by increased human disturbance and temporary loss of foraging habitat.	Surveys/educational and habitat protective measures applied

EFFECT OF THE TAKE

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the piping plover species, destruction, or adverse modification of its critical habitat. Incidental take of piping plovers is anticipated to occur in the Action Area (Critical Habitat Unit MS-01) in Hancock County, MS, for the life of this project.

REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measures (RPMs) are necessary and appropriate to minimize take on non-breeding piping plover for the proposed City of Bay St. Louis Recreational Harbor project within the Action Area. **These RPM's are in addition to the Conservation Measures being proposed by the applicant (pp. 3-4).**

1. Annually, for the life of the project, the permittee shall notify and enforce any permitted beach drivers (includes but not limited to turtle and shorebird surveyors, researchers, recreational vehicles, trash cleaners, beach tillers, beach vendors, law enforcement) to drive their vehicles just above or just below the primary wrack line while on the beach.
2. Permittee shall be required to conduct post project piping plover as described in the Terms and Conditions Section of this report for two years (fall 2013 through spring 2015).

TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the Act, the Corps shall include the following terms and conditions, which implement the reasonable and prudent measures; (RPM) described above and outline required reporting/monitoring requirements. These terms and conditions (T&Cs) are non-discretionary.

Post Construction Monitoring

The Mississippi Museum of Natural Science is conducting piping plover surveys through spring 2013. Therefore, to minimize duplication of effort, the permittee will monitor from the fall of 2013 through the spring of 2015.

- 1) Monitoring will take place bi-monthly (2 times/month) starting at the beginning of September and continuing through the end of March. This time-period covers the non-breeding season for plovers. The area to be monitored shall be the beach area between the CSX Railroad Bridge and Washington Street in Bay St. Louis. The purpose of the monitoring will be to quantify the level of take associated with the project and to evaluate the success of the conservation measures listed above.
- 2) Piping plover identification, especially when in non-breeding plumage, can be difficult. Therefore, qualified professionals with shorebird/habitat survey experience must conduct required fieldwork.
- 3) Guidelines for conducting surveys and datasheets are included in Appendix A. The following data shall be included in the survey results:
 - a) negative and positive survey data;
 - b) the amount and type of recreational use (people, dogs on-off leash, vehicles, kite boarders, etc);
 - c) piping plover locations with a Global Positioning System (GPS—decimal degrees preferred);

- d) habitat feature used by piping plovers when seen (intertidal, fresh wrack, old wrack, dune, mid-beach, vegetation, other);
 - e) behavior of piping plovers (foraging, roosting, preening, bathing, flying, aggression, walking);
 - f) color-bands seen on piping plovers;
 - g) all other shorebirds/waterbirds seen within the survey area; and
 - h) incorporate all information collected into a database.
- 4) A report outlining the survey/monitoring results (datasheets, maps, and database) will be submitted annually to the Service's Mississippi Field Office. Negative data (i.e., no plovers seen) shall also be reported. Also included in the annual report will be the status/results of all conservation measures (pp 3-4) carried out by the applicant.
- 5) Upon locating a dead or injured piping plover that may have resulted from direct or indirect result of the project, the permittee shall be responsible for notifying the Service's Jackson Mississippi Field Office (601-965-4900). Care shall be taken in handling an injured piping plover to ensure effective treatment or disposition and in handling dead specimens to preserve biological materials in the best possible state for later analysis.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. To further protect shorebird habitat and reduce beach erosion, the permittee should consider protecting the sand beach wrack line throughout the Bay St. Louis city limits, at minimum between Labor Day and Memorial Day.
2. The permittee should consider retro-fitting all poles or pier and boardwalk pilings, with pointy caps to reduce avian predation.
3. The permittee should consider measures to limit coastal development that might exacerbate coastal erosion and require storm protection in the future.
4. Establish when feasible and minimize impacts to all tidally exposed sand/mud flats that serve as beneficial foraging areas for shorebirds to the maximum extent possible.
5. We encourage the Corps and the permittee officials to coordinate with the Service during the pre-planning phase of any future beach nourishment projects or any sand placement project within the Bay St. Louis area.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

The Migratory Bird Treaty Act (MBTA)

The Migratory Bird Treaty Act (MBTA) implements various treaties and conventions between the U.S., Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory bird. Under the provisions of the MBTA it is unlawful “by any means or manner to pursue, hunt, take, capture or kill any migratory bird except as permitted by regulations issued by the Fish and Wildlife Service. The term “take” is not defined in the MBTA, but the Service has defined it by regulation to mean to pursue, hunt, shoot, wound, kill, trap, capture or collect any migratory bird, or any part, nest or egg or any migratory bird covered by the conventions or to attempt those activities.

In order to comply with the MBTA, the permittee should follow the guidelines listed in the Florida Wildlife Commission’s brochure on Nesting Beach Birds (Appendix B) and follow the Best Management Practices for driving on the beach (Appendix C). Implementing these guidelines and BMP’s will protect against project impacts to nesting shorebirds.

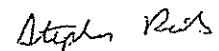
The Fish and Wildlife Service will not refer the incidental take of piping plover for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703-712), if such take is in compliance with the terms and conditions specified here.

REINITIATION NOTICE

This concludes formal consultation on the proposed City of Bay St. Louis Recreational Harbor in Hancock County, Mississippi. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary USACOE involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of an incidental take is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitats in a manner or to an extent not considered in this opinion; (3) the action is latter modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or a critical habitat designated that may be affected by the action. In instances where the amount or extent of an incidental take is exceeded, any operations causing such a take must cease until reinitiation.

The above findings and recommendations constitute the report of the Department of the Interior. If you have any questions about this opinion, please contact Paul Necaie of this office at (228)493-6631.

Sincerely,



Stephen Ricks
Field Supervisor

cc: (all electronic)

Nick Winstead, MMNS, Jackson, MS

Ken Graham, FWS, Atlanta, GA

Anne Hecht, FWS, Piping Plover Lead Biologist, Sudbury, MA

Patricia Kelly, FWS, Piping Plover Regional Lead Biologist, Panama City, FL

MSDMR CERTIFICATION



MISSISSIPPI
DEPARTMENT OF MARINE RESOURCES

April 21, 2010

Mayor Les Fillingame
City of Bay St. Louis
P.O. Box 2550
Bay St. Louis, MS 39521

RE: Permit DMR-100249

Dear Mayor Fillingame:

Please find enclosed the original and one copy of the Permit issued to you by the Mississippi Commission on Marine Resources on March 16, 2010.

Please execute this Permit by signing both documents and returning the copy to the Department of Marine Resources.

The Department of Marine Resources has also coordinated a review of your project through the Coastal Program review procedures and determined that the project referenced above is consistent with the Mississippi Coastal Program, provided that you comply with the noted conditions.

If you have any questions regarding the Permit or this correspondence, please contact Greg Christodoulou with the Bureau of Wetlands Permitting at 228-523-4109.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Walker", is written over a horizontal line.

William W. Walker, Ph.D.
Executive Director

WWW/gsc

Enclosures

cc: Mr. Larry Lewis, BMI Environmental Services, LLC
Ms. Mary Ellen Farmer, USACE
Ms. Florance Watson, OPC
Mr. Raymond Carter, SOS

Permit No.: DMR-100249

Type: Permit

Date: April 21, 2010

WHEREAS, application by: The City of Bay St. Louis for a Permit under the provisions of Chapter 27, Mississippi Code of 1972, as amended, to perform certain works affecting the coastal wetlands of the State of Mississippi on the Bay of St. Louis, Bay St. Louis, Hancock County Mississippi, was approved by said State of Mississippi Commission on Marine Resources on March 16, 2010.

NOW THEREFORE, this Permit authorizes the above named applicant hereinafter called Permittee, to perform such works in adherence to the following conditions contained herein:

1. A bulkhead approximately 985 feet in length and 3 feet above mean high tide in height shall be constructed as indicated on the attached diagram. Only clean material free of waste, metal and organic trash, and unsightly debris shall be used as backfill and the use of appropriate filter fabric is required;
2. Approximately 3,550 linear feet of mainline piers measuring 10 feet in width shall be constructed as indicated on the attached diagram;
3. Approximately 4,049 linear feet of finger piers measuring 4 feet in width shall be constructed as indicated on the attached diagram;
4. Five (5) electrical platforms measuring 10 feet in length and 10 feet in width shall be constructed as indicated in the attached diagram;
5. Two hundred sixteen (216) single-pile mooring pilings shall be installed as indicated on the attached diagram;
6. Approximately 13,290 square feet of decking shall be constructed as indicated on the attached diagram;
7. Ten (10) single-pile daymarkers shall be installed as navigational aids;
8. Approximately 100 linear feet of flow-through timber breakwater shall be constructed as indicated on the attached diagram;
9. A concrete pier/walkway measuring approximately 1,780 feet in length and 12 feet in width comprising the southern boundary of the harbor shall be constructed as indicated on the attached diagram;

10. A concrete flow-through breakwater measuring approximately 1,780 feet in length and associated with the above authorized pier/walkway shall be constructed as indicated on the attached diagram;
11. A pier measuring approximately 1,200 feet in length and 10 feet in width comprising the northern boundary of the harbor shall be constructed as indicated on the attached diagram;
12. A terminal pavilion associated with the above authorized pier measuring 30 feet in length and 20 feet in width shall be constructed as indicated on the attached diagram;
13. Three (3) fishing piers associated with the above authorized pier, each measuring 40 feet in length and 10 feet in width, shall be constructed as indicated on the attached diagram;
14. Three (3) terminal t-shaped piers associated with the above authorized fishing piers, each measuring 30 feet in length and 10 feet in width, shall be constructed as indicated on the attached diagram;
15. Approximately 1,200 linear feet of vinyl, sheetpile, flow-through breakwater associated with the above authorized pier shall be constructed as indicated on the attached diagram;
16. Structures shall be marked with reflectors and/or lights to avoid navigational hazards;
17. Approximately 2.19 acres of renourished sand beach will be filled for parking lot construction as indicated on the attached diagram;
18. Approximately 0.06 acre of water bottoms shall be filled and 0.29 acre of sand beach shall be excavated to facilitate shoreline straightening at the west harbor boundary as indicated on the attached diagram;
19. An area measuring 1,280 feet in length and 850 feet in width shall be dredged from a current depth ranging from 0' to 6.5' below mean lower low water (mllw) to a depth of 8 feet below mllw as indicated on the attached diagram. Approximately 140,000 cubic yards of material shall be removed;
20. An area measuring 4,100 feet in length and 150 feet in width shall be dredged from a current depth ranging from 6.5 to 8 feet below mllw to a depth of 8 feet below mllw as indicated on the attached diagram. Approximately 10,000 cubic yards of material shall be removed;
21. No sinks or sumps shall be created in the dredging process. Dredging depth is limited to that of the controlling navigational depth of the adjacent waters. A minimum 3:1 (horizontal: vertical) side slope shall be maintained in the dredge area;

22. A minimum distance of 10 feet shall be maintained between the dredge area and any wetlands;
23. Turbidity shall be minimized at the dredge site by methods such as using staked filter cloth, staged construction, and/or the use of turbidity screens around the immediate project site;
24. No dredging of wetlands, submerged aquatic vegetation or shellfish beds is authorized. Should oyster beds be encountered, the DMR Shellfish Bureau should be contacted to facilitate the relay of the resource to an approved location;
25. All dredged material shall be designated for beneficial use unless it has been determined that the material does not meet suitability standards. Unsuitable material shall be placed in an approved off-site disposal area or confined in on-site uplands. If on-site disposal is utilized, spoil disposal area shall be immediately seeded and/or stabilized and appropriate Best Management Practices shall be utilized to prevent the movement of sediment off-site and into adjacent wetlands or drainage areas;
26. Prior to the commencement of construction, permittee must submit to the DMR a copy of the Tidelands Lease as required by the Secretary of State and as filed in the subject County Land Records, or a statement from the Secretary of State that the permitted activity does not require a Tidelands Lease;
27. The Bay St. Louis Municipal Harbor shall not allow "live-aboards";
28. The Bay St. Louis Municipal Harbor shall operate according to "Clean Marina Guidelines";
29. Construction activities associated with the Bay St. Louis Municipal Harbor shall not compromise the structural integrity of the seawall constructed by the USACE as part of the MSCIP program;
30. No construction debris or unauthorized fill material shall be allowed to enter coastal wetlands or waters;
31. Best Management Practices shall be used at all times during construction;
32. Vegetated wetlands shall not be impacted; and,
33. No creosote material shall be used in construction.

This authorization is contingent on clearance from the Mississippi Department of Archives and History (MDAH), Water Quality Certification from the Mississippi Department of Environmental Quality (DEQ) and the Permittee shall maintain all water quality standards, regulations, and restrictions as set forth by the DEQ.

Any deviations beyond the restrictive conditions as set forth in your permit shall be considered a violation and may result in the revocation of the permit. Violations of these conditions may be subject to fines, project modifications and/or site restoration. Both the permittee and the contractor may be held liable for conducting unauthorized work. A modification to these conditions may be requested by submitting a written request along with a revised project diagram to DMR. Proposed modifications to dimensions, project footprint, and/or procedures must be approved in writing prior to commencement of work.

Issuance of this certification by DMR and acceptance by the applicant does not release the applicant from other legal requirements including but not limited to other applicable federal, state or local laws, ordinances, zoning codes or other regulations.

This certification conveys no title to land and water, does not constitute authority for reclamation of coastal wetlands and does not authorize invasion of private property or rights in property.

Please notify this Department upon completion of the permitted project so that compliance checks may be conducted by DMR staff.

This certification shall become effective upon acceptance by the applicant and receipt of the executed copy by the Director.

Please execute this certification by signing both documents and returning the copy to the Department of Marine Resources.


Work authorized by this certification must be completed on or before April 21, 2015.

Enclosed is a "Notice of Compliance" which must be conspicuously displayed at the site during construction of the permitted work.

The Department of Marine Resources has also coordinated a review of your project through the Coastal Program review procedures and determined that the project referenced above is consistent with the Mississippi Coastal Program, provided that you comply with the noted conditions and reviewing coastal program agencies do not disagree with said plans. By copy of this certification, we are notifying the U.S. Army Corps of Engineers of this determination.

THE PERMITTEE BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE STIPULATIONS AND CONDITIONS CONTAINED HEREIN AND AS DESCRIBED BY THE PLANS AND SPECIFICATIONS SUBMITTED AS PART OF THE COMPLETED APPLICATION.

STATE OF MISSISSIPPI
DEPARTMENT OF MARINE RESOURCES

BY: 
William W. Walker, Ph.D.
Executive Director

Accepted this the ____ day of _____, 20 ____.

BY: _____



Department of Marine Resources

NOTICE OF COMPLIANCE

DMR- 100249 PERMIT

DATE: April 21, 2010

THIS NOTICE ACKNOWLEDGES THAT:

**City of Bay St. Louis
P.O. Box 2550
Bay St. Louis, MS 39521**

**HAS, THROUGH APPLICATION TO THIS DEPARTMENT, DULY COMPLIED WITH
THE MISSISSIPPI COASTAL WETLANDS PROTECTION LAW TO:**

1. A bulkhead approximately 985 feet in length and 3 feet above mean high tide in height shall be constructed as indicated on the attached diagram. Only clean material free of waste, metal and organic trash, and unsightly debris shall be used as backfill and the use of appropriate filter fabric is required;
2. Approximately 3,550 linear feet of mainline piers measuring 10 feet in width shall be constructed as indicated on the attached diagram;
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4. Five (5) electrical platforms measuring 10 feet in length and 10 feet in width shall be constructed as indicated in the attached diagram;
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18. Approximately 0.06 acre of water bottoms shall be filled and 0.29 acre of sand beach shall be excavated to facilitate shoreline straightening at the west harbor boundary as indicated on the attached diagram;

POST THIS NOTICE CONSPICUOUSLY AT SITE OF WORK



Department of Marine Resources

19. An area measuring 1,280 feet in length and 850 feet in width shall be dredged from a current depth ranging from 0' to 6.5' below mean lower low water (mllw) to a depth of 8 feet below mllw as indicated on the attached diagram. Approximately 140,000 cubic yards of material shall be removed;
20. An area measuring 4,100 feet in length and 150 feet in width shall be dredged from a current depth ranging from 6.5 to 8 feet below mllw to a depth of 8 feet below mllw as indicated on the attached diagram. Approximately 10,000 cubic yards of material shall be removed;
21. No sinks or sumps shall be created in the dredging process. Dredging depth is limited to that of the controlling navigational depth of the adjacent waters. A minimum 3:1 (horizontal: vertical) side slope shall be maintained in the dredge area;
22. A minimum distance of 10 feet shall be maintained between the dredge area and any wetlands;
23. Turbidity shall be minimized at the dredge site by methods such as using staked filter cloth, staged construction, and/or the use of turbidity screens around the immediate project site;
24. No dredging of wetlands, submerged aquatic vegetation or shellfish beds is authorized. Should oyster beds be encountered, the DMR Shellfish Bureau should be contacted to facilitate the relay of the resource to an approved location;
25. All dredged material shall be designated for beneficial use unless it has been determined that the material does not meet suitability standards. Unsuitable material shall be placed in an approved off-site disposal area or confined in on-site uplands. If on-site disposal is utilized, spoil disposal area shall be immediately seeded and/or stabilized and appropriate Best Management Practices shall be utilized to prevent the movement of sediment off-site and into adjacent wetlands or drainage areas;
26. Prior to the commencement of construction, permittee must submit to the DMR a copy of the Tidelands Lease as required by the Secretary of State and as filed in the subject County Land Records, or a statement from the Secretary of State that the permitted activity does not require a Tidelands Lease;
27. The Bay St. Louis Municipal Harbor shall not allow "live-aboards";
28. The Bay St. Louis Municipal Harbor shall operate according to "Clean Marina Guidelines";
29. Construction activities associated with the Bay St. Louis Municipal Harbor shall not compromise the structural integrity of the seawall constructed by the USACE as part of the MSCIP program;
30. No construction debris or unauthorized fill material shall be allowed to enter coastal wetlands or waters;
31. Best Management Practices shall be used at all times during construction;
32. Vegetated wetlands shall not be impacted; and,
33. No creosote material shall be used in construction.

On the Bay of St. Louis between Main Street and Demontluzin Street in Bay St. Louis, Hancock County, Mississippi.

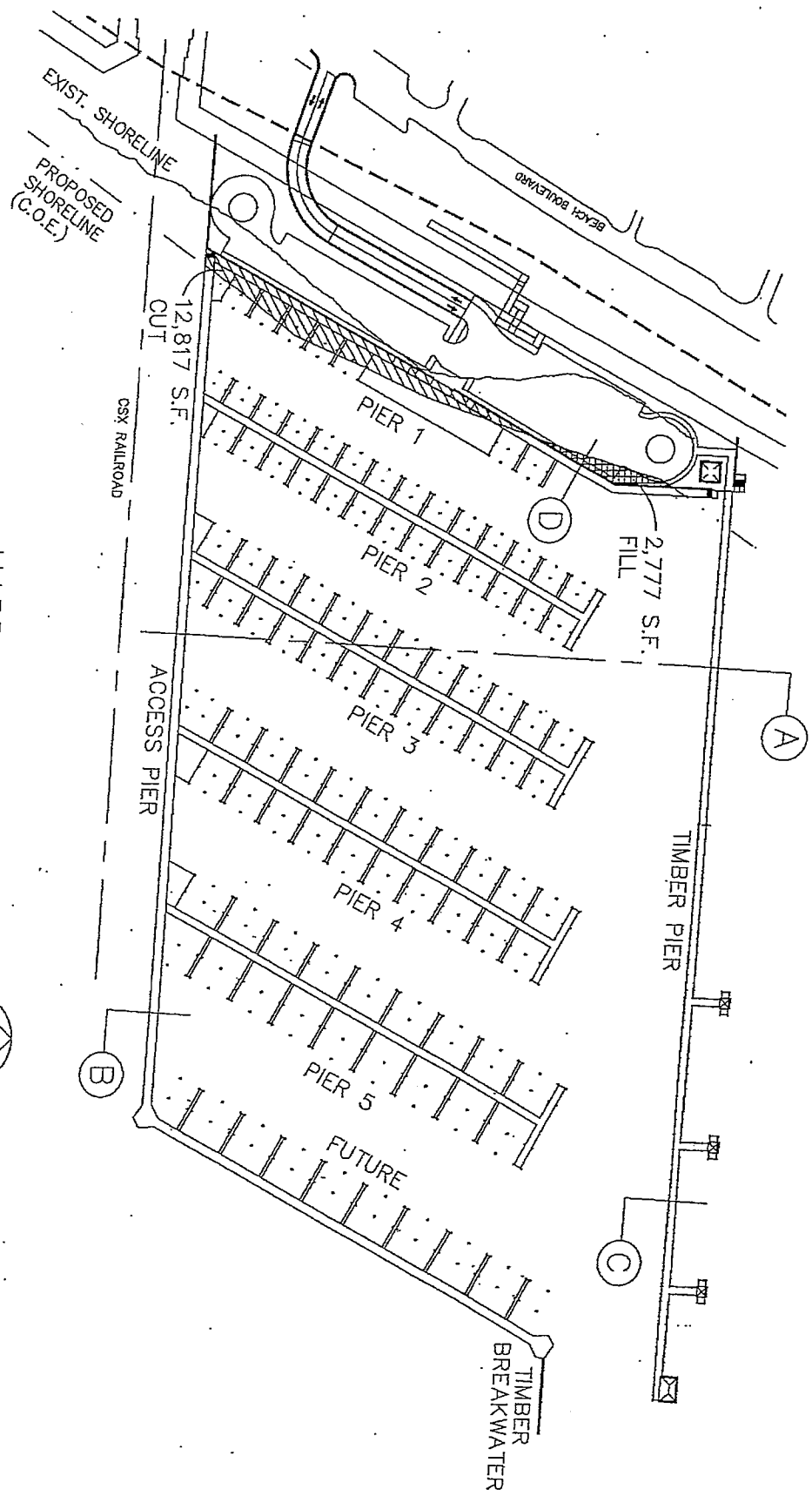
No construction debris or unauthorized fill material shall be allowed to enter coastal wetlands or waters.

FURTHERMORE, THIS PROJECT AS PROPOSED HAS BEEN FOUND TO BE CONSISTENT WITH ALL GUIDELINES FOR CONDUCT OF REGULATED ACTIVITIES IN COASTAL WETLANDS AS SET FORTH IN THE MISSISSIPPI COASTAL PROGRAM.


Executive Director

POST THIS NOTICE CONSPICUOUSLY AT SITE OF WORK

BAY ST. LOUIS
MUNICIPAL PIER & HARBOR



HARBOR & PIER PLAN

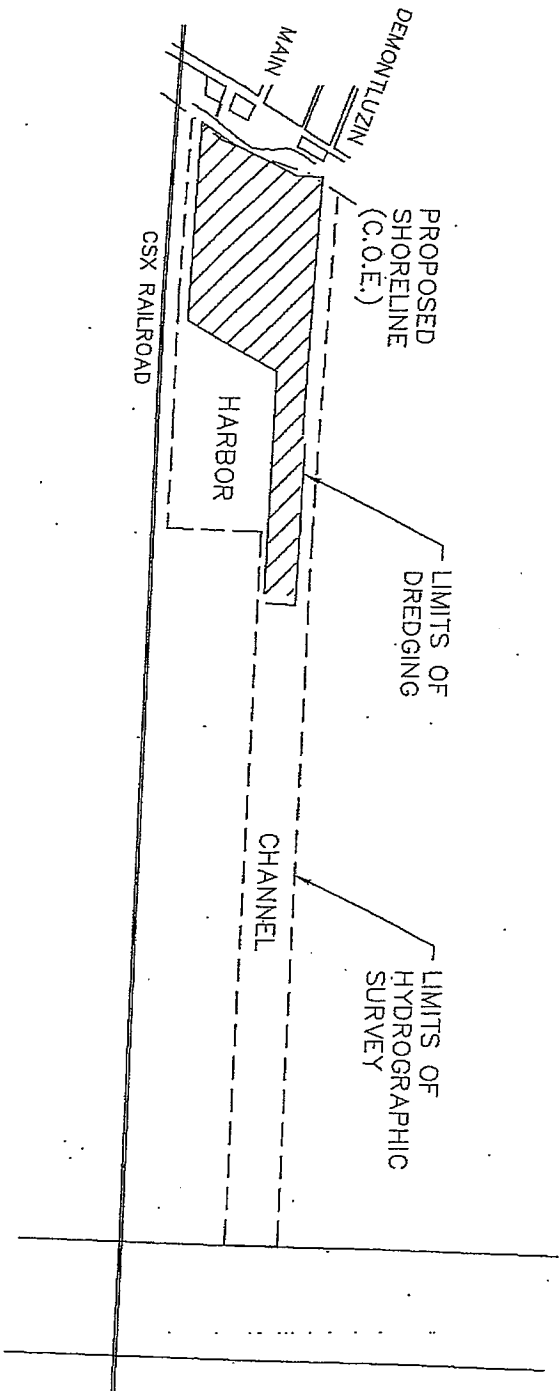
SCALE: 1"=200'



BROWN & MITCHELL, INC.
Consulting Engineers

12/1/09
3174\3174DMR

BAY ST. LOUIS
MUNICIPAL PIER & HARBOR



OVERALL PLAN

SCALE: 1"=1000'



BROWN & MITCHELL, INC.
Consulting Engineers

12/1/09
\\3174\\3174DMR

MDEQ 401 CERTIFICATION



STATE OF MISSISSIPPI

HALEY BARBOUR

GOVERNOR

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

TRUDY D. FISHER, EXECUTIVE DIRECTOR

August 13, 2010

Certified Mail No. 7009 2250 0001 7181 0047

Mayor Les Fillingame
City of Bay St. Louis
P.O. Box 2550
Bay St. Louis, Mississippi 39521

Dear Mayor Fillingame:

Re: Bay St Louis, City of, Marina
Hancock County
COE No. SAM200901736MJF
WQC No. WQC2009091

Pursuant to Section 401 of the Federal Water Pollution Control Act (33 U. S. C. 1251, 1341), the Office of Pollution Control (OPC) issues this Certification, after public notice and opportunity for public hearing, to the City of Bay St. Louis, an applicant for a Federal License or permit to conduct the following activity:

Bay St Louis, City of, Marina: to construct a recreational harbor which would provide approximately 208 boat slips within a protected basin. The harbor would include a sheltered basin, piers and walkways, sewer pump out facilities, fuel service and marine convenience store, and parking for users and visitors. The proposed action would entail creating / dredging a 150' by 4,100' (14.1 acres) channel to -8' below mean lower low water, and creating / dredging a 850' by 1,200' (23.4 acre) basin to -8 foot mean lower low water for a total of approximately 150,000 cubic yards of dredged material. The dredged material would be deposited on adjacent beaches and/or a Corps approved beneficial use area or upland disposal area. For bulkhead installation, the applicant would straighten the shoreline and fill 2,777 square feet of water bottoms and cut of 12,817 square feet of water bottoms. The applicant would also construct a 985 linear foot concrete bulkhead along the western margin of the harbor, a 1,780 linear foot concrete pier/walkway/breakwater structure along the southern margin, a 100 linear foot timber pile breakwater along the eastern margin, and re-construct the 1,200' by 10' Rutherford Pier, which included three (3) 40' by 10' fishing

52184 WQC20090001 OFFICE OF POLLUTION CONTROL

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piers, three (3) 15' by 15' pavilions, one (1) 30' by 20' pavilion and three (3) 30' by 10' T-Head Piers, and a 1,200 linear foot vinyl sheet pile breakwater along the northern margin of the harbor. Within the harbor, five main piers would be constructed. Pier 1 would be 10 foot wide and 750 foot long and would include six (6) 4' by 40' finger piers, and would provide fourteen (14) 40' boat slips. A 40' by 200' deck platform for loading/unloading would also be constructed on Pier 1. Pier 2 would be 10' wide and 600' long, would include thirteen (13) 4' by 35' finger piers and twelve (12) 4' by 40' finger piers, a 10' by 85' temporary lay-by pier on the northern end, and would provide twenty-seven (27) 35' boat slips and twenty-six (26) 40' boat slips. Pier 3 will be 10' wide and 600' long, would include twenty-two (22) 4' by 45' finger piers, a 10' by 100' temporary lay-by pier on the northern end, and would provide forty-seven (47) 45' boat slips. Pier 4 would be 10' wide and 600' long, would include nineteen (19) 4' by 50' finger piers, a 10' by 110' temporary lay-by pier on the northern end, and would provide forty-one (41) 50' boat slips. Pier 5 would be 10' wide and 600' long, would include eight (8) 4' by 50' finger piers and eight (8) 4' by 60' finger piers, a 10' by 120' temporary lay-by pier on the northern end, and would provide eighteen (18) 50' boat slips and seventeen (17) 60' boat slips. Future build-out is designed for an additional nine (9) 4' by 60' finger piers off of the concrete pier/walkway/breakwater structure, and would provide eighteen (18) 60' boat slips. Each of the five (5) main piers would also include a 10' by 10' electrical platform. The applicant would also install 216 mooring piles and 10 channel marker/sign pilings. [SAM200901736MJF, WQC2009091].

The Office of Pollution Control certifies that the above-described activity will be in compliance with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Section 49-17-29 of the Mississippi Code of 1972, if the applicant complies with the following conditions:

1. The channel depth shall gradually increase toward open water and shall not exceed the controlling navigational depth. No "sumps" shall be created by proposed dredging.
2. All pilings shall be steel, concrete, plastic, or timber treated with chromated copper arsenate (CCA).
3. Construction projects from one to less than five acres of total ground disturbances including clearing, grading, excavating, or other construction activities shall follow the conditions and limitations of the Stormwater Small Construction NPDES General Permit available at: [http://deq.state.ms.us/MDEQ.nsf/pdf/epd_SmallConstructionPermit/\\$File/Small_constr_prmt.pdf?OpenElement](http://deq.state.ms.us/MDEQ.nsf/pdf/epd_SmallConstructionPermit/$File/Small_constr_prmt.pdf?OpenElement).

4. Appropriate best management practices shall be used at all times during construction and dredging activities to prevent the movement of sediment off-site and into adjacent waters as well as minimize the turbidity at both the dredge and spoil disposal sites. In the event of any BMP failure, corrective actions shall be taken immediately. Should the BMP's outlined in the SWPPP prove to be inadequate, additional measures shall be implemented.
5. The final post-construction Stormwater Management Plan submitted by Neel-Schaffer on June 21, 2010, with revised drawing dated August 5, 2010 (copy attached), shall be implemented concurrent with project construction and maintained as proposed. The proposed plan consists of five (5) Contech VortSentry treatment units. The proposed work shall be done in accordance with the appropriate plans and drawings provided by the applicant. The Contech VortSentry units shall be maintained as proposed in the document entitled Bay St. Louis Waterfront Parking Lot – VortSentry Model HS 48 Maintenance Guide provided on August 5, 2010.
6. The marina shall be constructed as proposed by the Overall Site Plan outlined in Joint Public Notice number SAM-2009-01763-MJF incorporating the detail revision to the South Concrete Breakwater and Sheetpile Wall dated August 11, 2010.
7. The facility shall be required have all storage tanks approved and registered by the Office of Pollution Control, Ground Water Division, Under Ground Storage Tanks Branch.
8. The facility shall connect to an Office of Pollution Control approved wastewater Collection and Treatment system.
9. The marina shall provide wastewater pump-out facilities as outlined in the Fuel Dock Area Plan submitted by Brown & Mitchell, Inc. dated May 25, 2010. The marina shall prominently display a sign showing the location of the pump-out facility as well as other appropriate waste disposal information. The pump-out facility shall be tied into the collection and treatment system approved by the Office of Pollution Control.
10. All docked vessels with Type I and Type II marine sanitation devices shall be notified of and comply with a "locked head" policy. There shall be no discharge of either gray or black water from a docked vessel.

August 13, 2010

11. No persons shall live on boats moored at the marina unless the boats are equipped with a Type III (non-discharging) marine sanitation device (MSD).
12. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
13. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Office of Pollution Control also certifies that there are no limitations under Section 302 nor standards under Sections 306 and 307 of the Federal Water Pollution Control Act which are applicable to the applicant's above-described activity.

This certification is valid for the project as proposed. Any deviations without proper modifications and/or approvals may result in a violation of the 401 Water Quality Certification. If we can be of further assistance, please contact us.
If we can be of further assistance, please contact us.

Sincerely,



Harry M. Wilson III, P.E., DEE
Chief, Environmental Permits Division

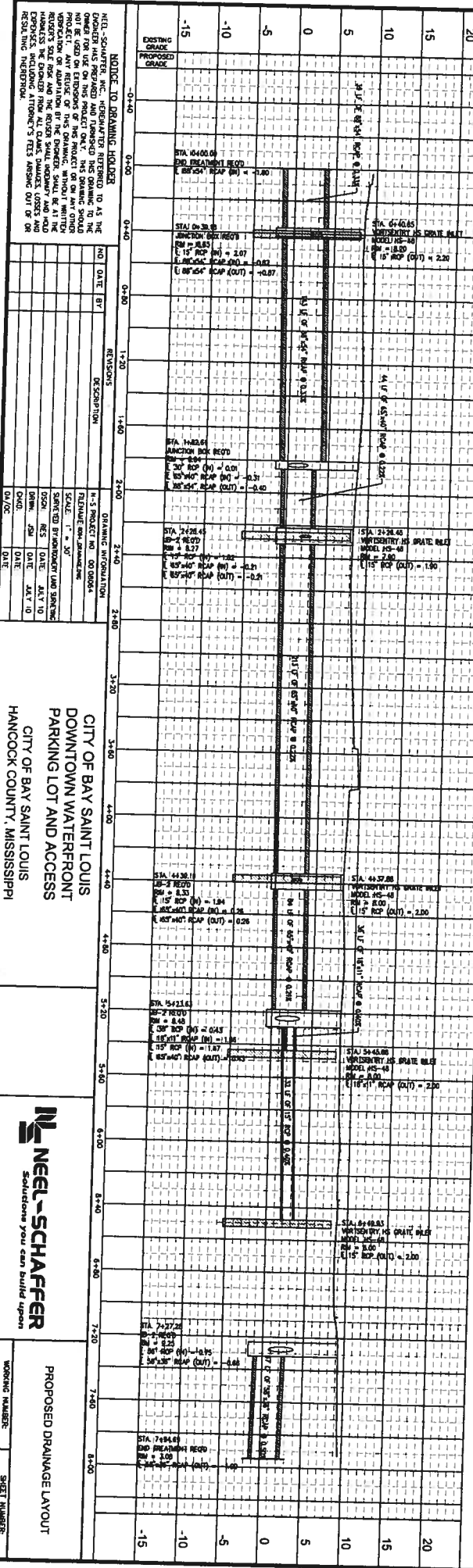
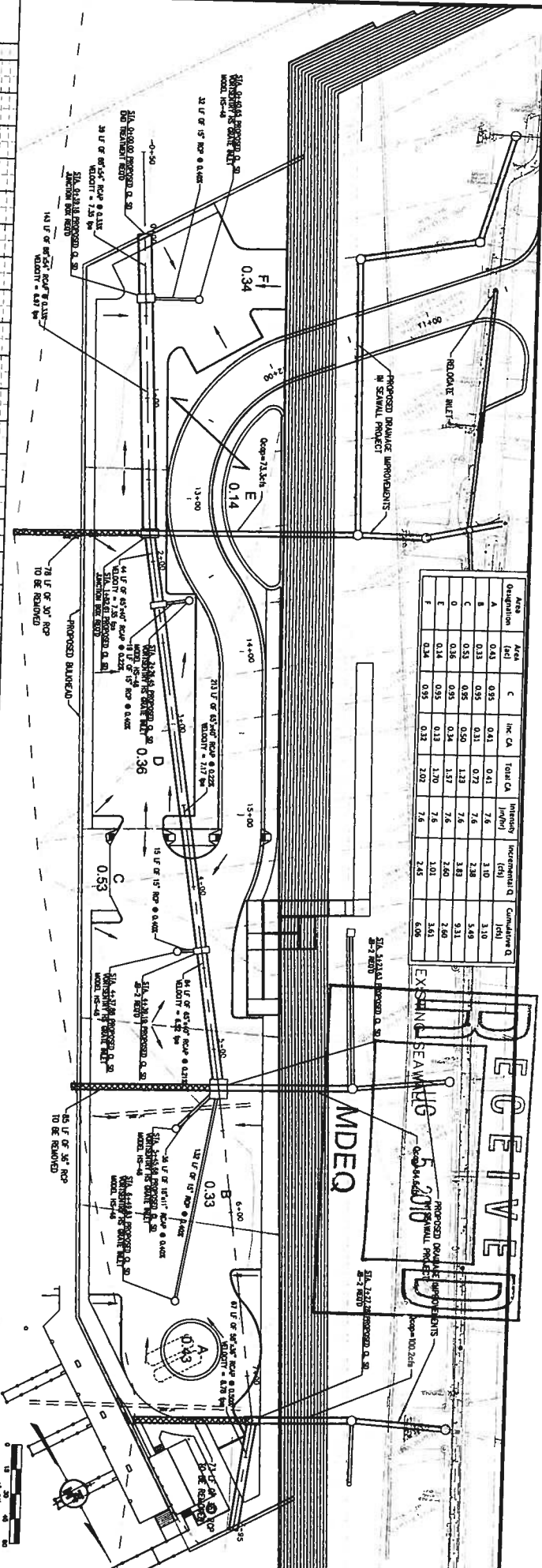
HMW: tgt

Enclosure:

Proposed Drainage Layout – Received August 5, 2010

cc: Ms. Maryellen J. Farmer, U.S. Army Corps of Engineers, Mobile District
Ms. Willa Brantley, Department of Marine Resources
Mr. Paul Necaise, U.S. Fish and Wildlife Service
Mr. Bill Ainslie, Environmental Protection Agency
Mr. Larry Lewis, BMI Environmental
Mr. Michael Moore, Neel-Schaffer

Station	Area	C	Inc CA	Total CA	Intensity	Incremental Q	Cumulative Q
Station	Area	C	Inc CA	Total CA	Intensity	Incremental Q	Cumulative Q
A	0.33	0.35	0.31	0.41	7.6	3.10	3.10
B	0.33	0.35	0.31	0.72	7.6	3.38	5.49
C	0.33	0.35	0.50	1.23	7.6	3.83	9.31
D	0.36	0.35	0.34	1.57	7.6	2.60	2.60
E	0.14	0.35	0.13	1.70	7.6	1.01	1.61
F	0.34	0.35	0.12	2.02	7.6	2.45	4.06



CITY OF BAY SAINT LOUIS
DOWNTOWN WATERFRONT
PARKING LOT AND ACCESS
CITY OF BAY SAINT LOUIS
HANCOCK COUNTY, MISSISSIPPI

NEEL-SCHAFER
Solutions you can build upon

PROPOSED DRAINAGE LAYOUT
WORKING NUMBER
DRG-01
SHEET NUMBER
16

Debris Removal at Rutherford Pier
MDMR Permit# DMR -110217



MISSISSIPPI
DEPARTMENT OF MARINE RESOURCES
Mississippi Regional General Permit Program

Certification Number: DMR-110217

Date: December 9, 2010

Name and Address: City of Bay St. Louis
P.O. Box 2550
Bay St. Louis, MS 39521

Project Description: Debris Removal

Location: Bay of St. Louis
W. Beach Blvd. at Ulman Avenue
Bay St. Louis, Hancock County, Mississippi

This permit serves as certification that subject activity has been reviewed by the Department of Marine Resources (DMR), and is found to be in compliance with Section 49-27-7 Mississippi Coastal Wetlands Protection Law, as amended, and United States Army Corps of Engineers, Mobile District, Mississippi General Permit MS-GP-10 dated September 11, 2007. It is issued under the provisions of federal and state laws for the protection of coastal wetlands within the State of Mississippi.

The applicant by acceptance of this certification agrees to abide by specific conditions as listed below in addition to general conditions as found in the Summary of Mississippi General Permits for Minor Structures and Activities within the Coastal Counties of the State of Mississippi, Located within the Regulatory Boundaries of the Mobile District of the U.S. Army Corps of Engineers (USACE), dated September 11, 2007. This document can be accessed on the USACE website at http://www.sam.usace.army.mil/RD/reg/ms_gen.pdf or at the DMR website at <http://www.dmr.ms.gov/Coastal-Ecology/permitting/Mobile-District-USACE.pdf>. A copy has also been included for your convenience. The specific conditions of this permit are as follows:

1. Debris shall be removed from an area approximately 1000 feet in length and 100 feet in width as indicated on the attached diagram. Debris includes, but is not limited to, non-imbedded stumps, tree limbs, appliances, lumber, metal objects, etc.;
2. Dredging of gravel, sand or silt; snagging of dead (imbedded) or living trees from a stream bank; and the removal of hazardous materials, etc., is not authorized under this permit. Imbedded trees may be cut off but their stumps shall not be removed from the bank;

3. Concrete piles and debris placed at Square Handkerchief Key, must be placed within the footprint of the reef. No material may be placed outside of designated reef area Longitude -89 18.901, Latitude 30 16.345;
4. Turbidity shall be minimized at the dredge site by methods such as using staked filter cloth, staged construction, and/or the use of turbidity screens around the immediate project site;
5. No dredging of wetlands, submerged aquatic vegetation or shellfish beds is authorized;
6. No construction debris or unauthorized fill material shall be allowed to enter coastal wetlands or waters;
7. Best Management Practices shall be used at all times during construction;
8. Vegetated wetlands shall not be impacted; and,
9. No creosote material shall be used in construction.

Any deviations beyond the restrictive conditions as set forth in your permit shall be considered a violation and may result in the revocation of the permit. Violations of these conditions may be subject to fines, project modifications and/or site restoration. Both the permittee and the contractor may be held liable for conducting unauthorized work. A modification to these conditions may be requested by submitting a written request along with a revised project diagram to DMR. Proposed modifications to dimensions, project footprint, and/or procedures must be approved in writing prior to commencement of work.

Issuance of this certification by DMR and acceptance by the applicant does not release the applicant from other legal requirements including but not limited to other applicable federal, state or local laws, ordinances, zoning codes or other regulations.

This certification conveys no title to land and water, does not constitute authority for reclamation of coastal wetlands, and does not authorize invasion of private property or rights in property.

Please notify this Department upon completion of the permitted project so that compliance checks may be conducted by DMR staff.

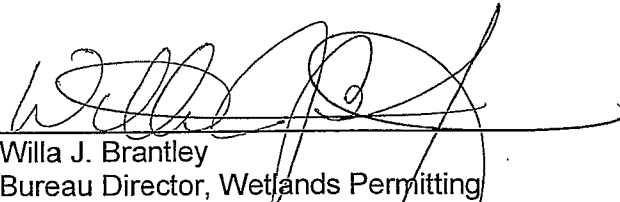
This certification shall become effective upon acceptance by the applicant and receipt of the executed copy by the Director.

Please execute this certification by signing both documents and returning the copy to the Department of Marine Resources.

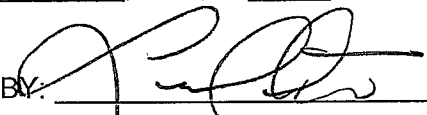
Work authorized by this certification must be completed on or before December 9, 2015.

Enclosed is a "Notice of Compliance" which must be conspicuously displayed at the site during construction of the permitted work.

THE PERMITTEE BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE STIPULATIONS AND CONDITIONS CONTAINED HEREIN AND AS DESCRIBED BY THE PLANS AND SPECIFICATIONS SUBMITTED AS PART OF THE COMPLETED APPLICATION.


Willa J. Brantley
Bureau Director, Wetlands Permitting

Accepted this the 14th day of December, A.D., 20 12.

BY: 
Applicant

WJB/lm

Attachment: Approved Diagram

cc: Mr. Damon M. Young, USACE
Ms. Florance Watson, OPC
Mr. Raymond Carter, SOS



Department of Marine Resources

NOTICE OF COMPLIANCE

DMR- 110217 GENERAL PERMIT

DATE: December 9, 2010

THIS NOTICE ACKNOWLEDGES THAT:

**City of Bay St. Louis
P.O. Box 2550
Bay St. Louis, MS 39521**

**HAS, THROUGH APPLICATION TO THIS DEPARTMENT, DULY COMPLIED WITH
THE MISSISSIPPI COASTAL WETLANDS PROTECTION LAW TO:**

1. Debris shall be removed from an area approximately 1000 feet in length and 100 feet in width as indicated on the attached diagram. Debris includes, but is not limited to, non-imbedded stumps, tree limbs, appliances, lumber, metal objects, etc.;
2. Dredging of gravel, sand or silt; snagging of dead (imbedded) or living trees from a stream bank; and the removal of hazardous materials, etc., is not authorized under this permit. Imbedded trees may be cut off but their stumps shall not be removed from the bank;
3. Concrete piles and debris placed at Square Handkerchief Key must be placed within the footprint of the reef. No material may be placed outside of designated reef area Longitude -89 18.901, Latitude 30 16.345;
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6. No construction debris or unauthorized fill material shall be allowed to enter coastal wetlands or waters;
7. Best Management Practices shall be used at all times during construction;
8. Vegetated wetlands shall not be impacted; and,
9. No creosote material shall be used in construction.

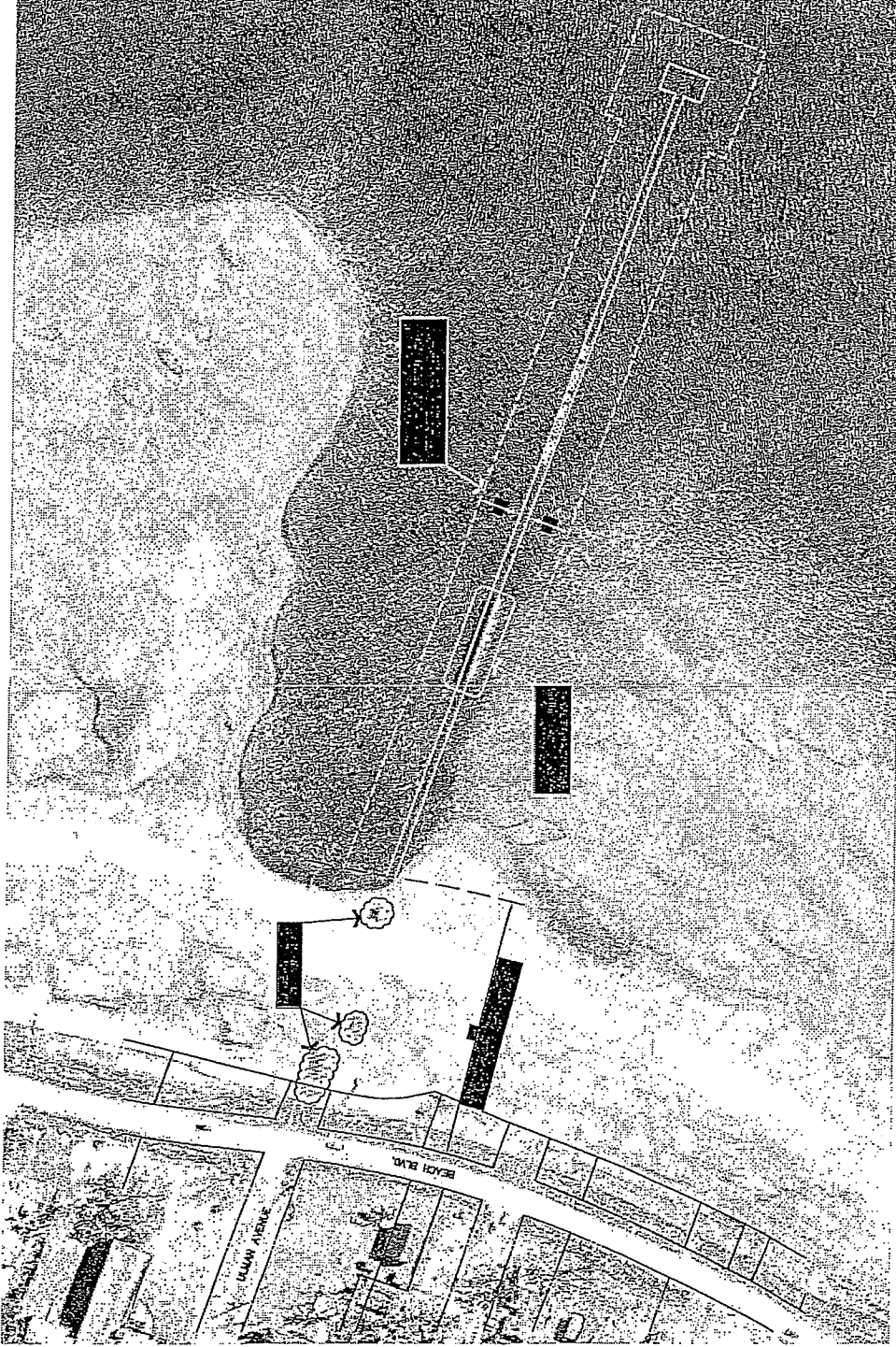
On the Bay of St. Louis at Ulman Avenue in Bay St. Louis, Hancock County,
Mississippi.

**No construction debris or unauthorized fill material shall be allowed to enter
coastal wetlands or waters.**

**FURTHERMORE, THIS PROJECT AS PROPOSED HAS BEEN FOUND TO BE
CONSISTENT WITH ALL GUIDELINES FOR CONDUCT OF REGULATED
ACTIVITIES IN COASTAL WETLANDS AS SET FORTH IN THE MISSISSIPPI
COASTAL PROGRAM.**


Bureau Director, Wetlands Permitting

POST THIS NOTICE CONSPICUOUSLY AT SITE OF WORK



PIER DEMOLITION PLAN
JIMMY RUTHERFORD FISHING PIER DEMOLITION
CITY OF BAY ST. LOUIS
BAY ST. LOUIS, MISSISSIPPI

B M BMI Environmental Services, LLC
Environmental Consultants